

agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

§ 115.208 Suspension of interim certification.

(a) *Suspension based on changes in the law.* (1) The Assistant Secretary may suspend the agency's interim certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends interim certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent to the Act on its face or in its operations. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that, notwithstanding the actions taken by the State or locality as described in paragraph (a)(1), the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification. HUD will provide full or partial reimbursement for cases processed during the period of the suspension.

(4) If the Assistant Secretary determines that the actions taken by the State or locality do limit the agency's effectiveness interim certification will be denied pursuant to § 115.209.

(b) *Suspension based on agency performance.* (1) The Assistant Secretary may suspend the interim certification of an agency charged with the administration of a fair housing law or ordinance if the Assistant Secretary has

reason to believe that the agency's performance does not comply with the criteria set forth by this part. Such suspension shall not exceed 180 days.

(2) If the agency is suspended pursuant to paragraph (b) of this section, the FHEO Field Office may elect not to provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with § 115.203. The FHEO Field Office will provide technical assistance to the agency during this period of time.

(3) During the period of a suspension the Assistant Secretary shall not refer complaints to the agency.

(4) Suspension under paragraph (b) of this section renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(5) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency's performance.

(c) HUD will provide an agency with notice of the specific reasons for the suspension of its interim certification and an opportunity to respond, in accordance with the procedures set forth in HUD issued guidance.

§ 115.209 Denial of interim certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in this part that the State and local law or ordinance, on its face or in its operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the State or local official in writing of the reasons for that determination.

(b) The agency, within 20 days from the date of the receipt of this notice, may submit, in writing, any opposition to the planned denial of interim certification to the Assistant Secretary. The Assistant Secretary will evaluate all

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pertinent written comments, information, and documentation. If, after reviewing all materials submitted by the agency, the Assistant Secretary is still of the opinion that interim certification should be denied, the Assistant Secretary will inform the agency in writing of that determination.

(c) If the agency does not, within 20 days of receipt of the Assistant Secretary's notice of denial of interim certification, make a request of the Assistant Secretary under paragraph (b) of this section to submit additional data, views, or comments, no further action shall be required of the Assistant Secretary and denial of interim certification shall occur.

§ 115.210 Procedure for certification.

(a) *Certification.* (1) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.202, 115.203 and this section, that the State or local law or ordinance, both "on its face" and "in operation," provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may enter into a Memorandum of Understanding (MOU) with the agency.

(2) The MOU is a written agreement providing for the referral of complaints to the agency and for communication procedures between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's continuing substantial equivalency certification.

(3) A MOU, after it is signed by all appropriate signatories, may authorize an agency to be a certified agency for a period of not more than five years.

(b) *Performance Improvement Plan.* (1) If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(2) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the

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agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

(c) *Annual assessments.* The Assistant Secretary shall annually assess the performance of an agency to determine whether it continues to qualify for certification under this part. If the Assistant Secretary affirmatively concludes that the agency's law and performance have complied with the requirements of this part in each of the five years, the Assistant Secretary may offer the agency an updated Memorandum of Understanding.

(d) *Interim certification required prior to certification.* An agency shall receive interim certification prior to receiving certification.

§ 115.211 Suspension of certification.

(a) *Suspension based on changes in the law.* (1) The Assistant Secretary may suspend the agency's certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent on its face and in its operation to the Act. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification.